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6                   UNITED STATES DISTRICT COURT  
7                   EASTERN DISTRICT OF CALIFORNIA  
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9                   PORFIRIO SANCHEZ,  
10                  Plaintiff,  
11                  v.  
12                  AETNA LIFE INSURANCE COMPANY,  
13                  et al.,  
14                  Defendant.

No. 2:20-cv-00038-JAM-CKD

**ORDER GRANTING DEFENDANTS'  
MOTION TO CHANGE VENUE**

15               This matter is before the Court on Nationwide Mutual  
16 Insurance Company and Aetna Life Insurance Company's  
17 ("Defendants") Motion to Change Venue. Mot., ECF No. 5.  
18 Porfirio Sanchez ("Plaintiff") filed an opposition, ECF No. 11,  
19 to which Defendants replied, ECF No. 13. After consideration of  
20 the parties' briefing on the motion and relevant legal authority,  
21 the Court GRANTS Defendants' Motion to Change Venue.<sup>1</sup>  
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23               I. BACKGROUND  
24

25 Plaintiff was a commercial underwriter for Nationwide Mutual  
26 Insurance Company ("Nationwide"). Compl. ¶ 3, ECF No. 1. During

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27               <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for May 19, 2020.

1 Plaintiff's employment, he participated in a Nationwide-sponsored  
2 employee welfare benefits plan. Compl. ¶¶ 9, 10, 13. Under the  
3 plan, Plaintiff received short-term and long-term disability  
4 benefits. Compl. ¶¶ 10, 14. On July 6, 2017, Plaintiff fell in  
5 the shower, hitting his head and tail bone, and sustaining  
6 several injuries. Compl. ¶ 17. As a result, Plaintiff alleges  
7 he was no longer able "to attend to any normal activities[,]  
8 including work." Id.

9 Plaintiff subsequently applied for short-term disability  
10 benefits. Compl. ¶ 18. Defendants paid Plaintiff's initial  
11 claim. Compl. ¶ 19. However, when Plaintiff's doctor failed to  
12 send updated medical records, Defendants terminated his short-  
13 term benefits on October 31, 2017. Id. Defendants reaffirmed  
14 the termination of Plaintiff's short-term benefits on February 7,  
15 2019. Compl. ¶ 33. On June 25, 2019, Plaintiff applied for  
16 long-term disability benefits. Compl. ¶ 45. On August 1, 2019,  
17 Defendants denied Plaintiff's application, informing him that he  
18 was no longer eligible for long-term benefits because his short-  
19 term benefits had been denied. Compl. ¶ 46. Defendants upheld  
20 the denial on September 13, 2019, and then again on November 18,  
21 2019. Compl. ¶¶ 49, 52.

22 On January 1, 2020, Plaintiff filed suit against Defendants  
23 for violations of the Employee Retirement Income Security Act of  
24 1974 ("ERISA"), §§ 502(a)(1)(B) and 502(a)(3). Compl. ¶¶ 61-65.  
25 Plaintiff seeks to recover disability benefits allegedly due to  
26 him under the benefits plan. Compl. ¶ 1. Defendants now move  
27 for the Court to change the venue of this case from the Eastern  
28 District of California to the Southern District of Ohio based on

1 a forum-selection clause in the benefits plan. Mot. at 3-4.  
2 Plaintiff opposes, arguing the applicable benefits plan failed to  
3 specify venue. Opp'n at 3-5.

4

5 II. OPINION

6 A. Legal Standard

7 "For the convenience of parties and witnesses, in the  
8 interest of justice, a district court may transfer any civil  
9 action to any other district or division where it might have  
10 been brought or to any district or division to which all parties  
11 have consented." 28 U.S.C. § 1404(a). Section 1404(a) seeks to  
12 "prevent the waste of time, energy and money and to protect  
13 litigants, witnesses and the public against unnecessary  
14 inconvenience and expense[.]" Van Dusen v. Barrack, 376 U.S.  
15 612, 616 (1964) (internal quotation marks omitted).

16 In considering a motion to change venue, "[t]he presence of  
17 a forum-selection clause . . . will be a significant factor that  
18 figures centrally in the district court's calculus." Stewart  
19 Org. v. Ricoh Corp., 487 U.S. 22, 20 (1988) (quoting Van Dusen,  
20 376 U.S. at 622). A valid forum-selection clause constitutes  
21 the parties' agreement as to the most appropriate forum. Atl.  
22 Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas, 571  
23 U.S. 49, 63 (2013). Thus, the "court should ordinarily transfer  
24 the case to the forum specified in that clause. Only under  
25 extraordinary circumstances unrelated to the convenience of the  
26 parties should a § 1404(a) motion be denied." Id.

27 The party seeking to defeat the forum-selection clause  
28 bears the burden of demonstrating "that the transfer to the

1 forum for which the parties bargained is unwarranted." Id. To  
2 defeat the clause, the party must "clearly show that enforcement  
3 would be unreasonable and unjust." M/S Bremen v. Zapata Off-  
4 Shore Co., 407 U.S. 1, 15 (1972). A forum selection clause may  
5 be deemed unreasonable if: (1) the inclusion of the clause in  
6 the agreement was the product of fraud or overreaching; (2) the  
7 party wishing to repudiate the clause would effectively be  
8 deprived of his day in court were the clause enforced; and  
9 (3) enforcement would contravene a strong public policy of the  
10 forum in which suit is brought. Holland Am. Line, Inc. v.  
11 Wartsila N. Am., Inc., 485 F.3d 450, 458 (9th Cir. 2007).

12 Accordingly, when presented with such an agreement, the  
13 court must disregard plaintiff's choice of forum and the  
14 parties' private interests. Atl. Marine, 571 U.S. at 64.  
15 Instead, it can only "consider arguments about public-interest  
16 factors" and "those factors will rarely defeat a transfer  
17 motion." Id. The party acting in violation of the forum-  
18 selection clause bears the burden of showing that public-  
19 interest factors "overwhelmingly disfavor a transfer."  
20 Id. at 67.

21       B.     The Forum-Selection Clause

22       The forum-selection clause at issue is included in the  
23 benefits plan, as amended and restated on July 1, 2018 ("2018  
24 benefits plan"). Mot. at 2. The clause specifies that "[a]ny  
25 legal action brought against the Plan must be filed in the  
26 United States District Court, Southern District of Ohio, Eastern  
27 Division." Benefits Plan, Legal Actions § 10.10(b), Ex. A to  
28 Mot., ECF No. 5-1. This language indicates that any litigation

1 over the benefits plan must be initiated in the Southern  
2 District of Ohio. Hunt Wesson Foods, Inc. v. Supreme Oil Co.,  
3 817 F.2d 75, 77 (9th Cir. 1987) ("[I]n cases in which forum  
4 selection clauses have been held to require litigation in a  
5 particular court, the language of the clauses clearly required  
6 exclusive jurisdiction.") (emphasis in original). The mandatory  
7 nature of the forum-selection clause is not in dispute. See  
8 Opp'n at 3.

9 Plaintiff contends the case should not be transferred for  
10 two reasons. First, Plaintiff argues the forum-selection clause  
11 does not apply to this action because the benefits plan in  
12 existence at the time Plaintiff filed his short-term disability  
13 claim did not include a forum-selection clause ("2017 benefits  
14 plan"). Opp'n at 3-5. Second, Plaintiff contends enforcement  
15 of the clause would be unfair largely due to: (1) his financial  
16 inability to bear the cost of the venue change; and (2) the  
17 standard of review courts must apply in Ohio. Opp'n at 5-9.  
18 As explained below, neither argument is sufficient to defeat  
19 Defendants' motion.

20           1. Applicability

21 Plaintiff argues the forum-selection clause in the 2018  
22 benefits plan is inapplicable because the 2017 benefits plan  
23 governed at the time Plaintiff brought his disability claim.  
24 Opp'n at 3. Plaintiff was injured on July 6, 2017, and  
25 subsequently applied for short-term disability benefits. Compl.  
26 ¶¶ 17-18. The 2018 benefits plan came into effect on July 1,  
27 2018. Mot. at 2. Plaintiff claims he is subject to the 2017  
28 benefits plan, which did not contain a forum-selection clause,

1 rather than the 2018 benefits plan. Opp'n at 3. (It is  
2 undisputed that the 2017 benefits plan does not include a  
3 mandatory forum provision.) Plaintiff is incorrect.

4 The controlling document is the version of the welfare plan  
5 in effect when a participant's cause of action accrues. Grosz-  
6 Salomon v. Paul Revere Life Ins. Co., 237 F.3d 1154, 1160 (9th  
7 Cir. 2001) ("That she became permanently disabled and filed her  
8 disability claim while the first policy was in effect is  
9 irrelevant; it does not entitle her to invoke that plan's  
10 provisions in perpetuity."). A participant's cause of action  
11 accrues on the date the claim is finally denied. See id. at  
12 1159; see also Wise v. Verizon Communications, Inc., 600 F.3d  
13 1180, 1188 (9th Cir. 2010) (Plaintiff's ERISA claim accrued upon  
14 final denial notification: when she was informed that no further  
15 internal appeals were possible and that her opportunity to  
16 submit more medical documentation had ceased).

17 The final administrative denial of Plaintiff's short-term  
18 benefits occurred on February 7, 2019. See Compl. ¶ 33. And  
19 the final administrative denial of Plaintiff's long-term  
20 benefits occurred on November 18, 2019. See Compl. ¶ 52. Thus,  
21 the 2018 benefits plan, which came into effect prior to both  
22 final administrative denials, is the controlling document here.  
23 See Marin v. Xerox Corp., 935 F.Supp.2d 943, 945 (N.D. Cal.  
24 2013) (holding the benefits plan with a mandatory forum  
25 provision that was in effect when plaintiff's claim was denied,  
26 not the plan when her benefits were first granted, was the  
27 controlling document). Accordingly, its forum-selection clause  
28 applies.

1       The validity of the forum-selection clause in the 2018  
2 benefits plan is not in dispute. Thus, the Court finds the  
3 clause to be valid. See Doe I v. AOL LLC, 552 F.3d 1077, 1083  
4 (9th Cir. 2009) ("[A] forum selection clause is presumptively  
5 valid; the party seeking to avoid a forum selection clause bears  
6 a 'heavy burden' to establish a ground upon with [the court]  
7 will conclude the clause is unenforceable."). Moreover, courts  
8 have held that forum-selection clauses are not inconsistent with  
9 the terms or policy rationales of ERISA. See e.g., Rodriguez v.  
10 PepsiCo Long Term Disability Plan, 716 F.Supp.2d 855, 860 (N.D.  
11 Cal. 2010) ("Nothing in the statutory language bars those  
12 negotiating ERISA plans from narrowing that menu of options to  
13 one venue in particular. As many other district courts have  
14 already observed, Congress could have—but has not—expressly  
15 barred parties from agreeing to restrict ERISA's venue  
16 provisions.").

17       The Court therefore finds that the forum-selection clause  
18 contained in the 2018 benefits plan is applicable and valid.

19           2. Fairness

20       When a forum-selection clause is scrutinized over its  
21 "fundamental fairness," it may be deemed unfair if inclusion of  
22 the clause was motivated by bad faith, if "accession to the  
23 forum clause" was obtained "by fraud or overreaching," or if the  
24 party had no notice of the forum provision. Carnival Cruise  
25 Lines, Inc. v. Shute, 499 U.S. 585, 595 (1991). The party  
26 challenging the clause bears a "heavy burden of proof." M/S  
27 Bremen, 407 U.S. at 17. Plaintiff does not argue that the  
28 forum-selection clause is unfair for any of those reasons.

1 Instead, Plaintiff argues enforcement of the forum-selection  
2 clause would be unfair because he would be burdened by  
3 additional legal costs. Opp'n at 6-7. Plaintiff further argues  
4 enforcement would be unfair because Ohio allows courts to review  
5 the plan administrator's decision for abuse of discretion  
6 whereas California requires *de novo* review. Opp'n at 8-9.

7 With regard to additional legal costs, Plaintiff does not  
8 contend that they would effectively "deprive[] [him] of his day  
9 in court." Rodriguez v. PepsiCo Long Term Disability Plan, 716  
10 F.Supp.2d 855, 861 (N.D. Cal. 2010) (citing Murphy v. Schneider  
11 Nat'l, Inc., 362 F.3d 1133, 1140 (9th Cir. 2004)). Nor could he  
12 so contend. In Rodriguez, the court enforced a forum-selection  
13 clause, even though it was physically and financially impossible  
14 for the California plaintiff to attend a trial in New York,  
15 because the nature of an ERISA action is such that "the prospect  
16 of a trial is highly improbable; rather, [the] action is likely  
17 to be decided by the court on motions for summary judgment."  
18 Id. at 862. The court reasoned that, if trial were to occur,  
19 the plaintiff could move to transfer venue back to the original  
20 forum. Id. Absent the contention that a change in venue would  
21 wholly deprive Plaintiff of his day in court, the Court cannot  
22 take this argument into consideration as it must disregard the  
23 parties' private interests and only consider arguments about  
24 public-interest factors. Atl. Marine, 571 U.S. at 64.

25 As for Plaintiff's argument about the standard of review,  
26 it is without merit. A denial of benefits claim in an ERISA  
27 case "is to be reviewed under a *de novo* standard unless the  
28 benefit plan gives the administrator or fiduciary discretionary

1 authority to determine eligibility for benefits or to construe  
2 the terms of the plan.” Firestone Tire and Rubber Co. v. Bruch,  
3 489 U.S. 101, 115 (1989). If the benefit plan confers such  
4 discretionary authority, then the decision to deny benefits is  
5 reviewed for abuse of discretion. Id. Here, the 2018 benefits  
6 plan grants discretion to the administrator. See Benefits Plan,  
7 Legal Actions § 10.10(a), Ex. A to Mot., ECF No. 5-1. As a  
8 result, the denial will be reviewed for abuse of discretion  
9 regardless of whether the action progresses in California or  
10 Ohio. See Valdez v. AT&T Umbrella Benefit Plan No. 1, 371  
11 F.Supp.3d 754, 766 (S.D. Cal. 2019) (applying the abuse of  
12 discretion standard to a denial of benefits claim brought in  
13 California where the benefits plan conferred discretionary  
14 authority).

15           In sum, Plaintiff has not borne the "heavy burden" of  
16 showing the applicable forum-selection clause to be  
17 unenforceable. AOL LLC, 552 F.3d at 1083. The Court finds that  
18 enforcing this clause would not violate fundamental fairness.  
19 Accordingly, the forum-selection clause applies in full force  
20 and the matter must be transferred to the Southern District of  
21 Ohio.

### III. ORDER

23 For the reasons set forth above, the Court GRANTS  
24 Defendants' Motion to Change Venue.

IT IS SO ORDERED.

26 | Dated: June 23, 2020

*John A. Mendez*  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE